## MOTOR MONDAY



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#### JURY SELECTION: IT IS THE TRIAL

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## Jury Selection in a DUI Case

NOT PART OF THE TRIAL: IT IS THE TRIAL!

#### Considerations

How do we communicate?

What are the limitations?

How do we educate the jury?

How do we get them to see the case as we do?

# The Brain Quadrants



## Brain Quadrants

We communicate differently

We learn differently

We consume and retain information differently

We need some of each quadrant for our jury

#### Quadrant A

- Concrete thinkers
- Logical
- Precise



- Prefer:
  - "To the point" information
  - Proof of validity
  - Working alone
  - Lectures
  - Textbook reading
  - Lists
  - Numbers and data sets

- Dislike:
  - Being disturbed
  - Listening on tape
- Struggle with:
  - Expressing emotions
  - Vague or imprecise concepts

#### Quadrant B

- Linear
- Organized
- Consistent
- Timely
- Follow rules



- Prefer:
  - Working in groups
  - A clear beginning, middle and end
  - Planning things out
  - Details
  - Follow up

- Like:
  - Examples
  - Practical applications
- Dislike:
  - Ambiguities
  - Risk
  - Unclear expectations

Quadrant C

- Emotional
- They make decisions because they want to, rather than because they should
- Want to please others
- Expressive
- Good listeners
- Team players



- Prefer:
  - Friendly, emotional experiences
  - Interaction
  - Personal relationships with teachers
  - Expressing and sharing feelings
  - Stories
  - Group discussion
  - Group activities
  - Tactile activities

- Dislike
  - Lectures
  - Lack of interaction or participation
  - Data
  - Analysis
  - Lists

#### Quadrant D

- Leaders
- Global ("Big Picture") thinkers
- Aggressive
- Impulsive
- Spontaneous and fun
- Smallest group



- Prefer:
  - Overviews
  - Hands on experiences
  - Freedom to explore
  - Variety of content
  - Challenges
  - Pictures
  - Metaphors

- Dislike:
  - Structure
  - Deadlines
  - Lists
  - Lectures
  - Details

## What Are Our Limitations?

#### Limitations You Can't Control





The manner in which the judge allows you to proceed

The amount of time you have to select your jury

#### Limitations You Can Control

- What do we REALLY want to say?
  - Will you find them guilty?
  - Doesn't this make you mad?
  - This guy could have killed your family!
    - If you acquit he will do it again!

## So Say It...

#### In a different way:

Through education

Through indoctrination

# Educate the Jury

## **Key Points**

- Conversation, not interrogation
- Develop relationships
- Be fair
- Have at a minimum all prospective juror's driving histories

### **Preparing for Jury Selection**

#### Chart

 Use a personal jury seating chart or one provided by the clerk.

#### Familiarize

Familiarize
 yourself with
 the Judge's
 particular
 process.

#### Checklist

 Create a quick and easy to read outline or checklist for your topics.

#### Help

 If you have an LEO as a State's Representative, make use of them.

## Conversation Not Interrogation

#### Start

 Start with questions that relax them

#### Watch

 Watch them for signs of discomfort

#### Converse

Converse
 with them
 as you
 would in a
 social
 setting

#### Calm

Jurors are anxious: calm them



#### Calm Fears

- People are afraid of the unknown, so...
  - Tell them who you are
  - Tell them who the other folks in the courtroom are
  - Tell them what the process is and what to expect

#### "Do You Know" Questions...

Me? Anyone in my office? Elected DA?

Defendant?

Defense attorney? His firm?

Officer?

Witnesses?

Courtroom personnel?

#### Softball Questions

In what part of the county do you live?

Married? Children?

Work outside the home? Spouse/ domestic partner's work?

Know any other jurors on panel?

Ever been on a jury?

If someone says they work or worked as a truck driver.....

Long haul or short?

Have you driven up on a crash?

Were people injured?

Have you seen drivers on the road that were driving erratically?

Let the juror be the teacher!

# Circle Back over and over and over

Does the fact that the defense attorney represented you in your divorce put you in a position where you can't be fair to both sides?

Does the fact that this happened in front of your childrens' school put you in a position where you can't be fair to both sides?

Does the fact that your ex-boyfriend was an alcoholic put you in a position where you can't be fair to both sides?

Does the fact that your son is a law enforcement officer and you find them to be honest put you in a position where you can't be fair to both sides?



Use their answers to highlight what you need!

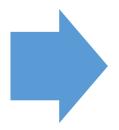
## Wrap-up Questions

Is there any reason you can't sit in judgment of another person's conduct?

Is there anything you thought of while I have been talking that you think we need to know or address?

#### **Educate With Common Sense**

Jurors' reliance on driving



## What does driving require in terms of skill?

- Mental and physical facultiesdriving is multi-tasking
- SFSTs and multi-tasking

#### **Educate on Burdens**

Burden of Proof

Burden of Law

Explain what it ISN'T

Use pattern jury instructions

#### Circumstantial Evidence

01

Explain the pattern instruction

02

Use analogy

03

Make sure they understand the value

#### Bias

- Ask questions to:
  - Reveal bias to law enforcement
  - Reveal bias to governmental operations
  - Reveal bias to the law
- Converse about unfairness of bias
  - Use analogy to demonstrate



# Be Prepared....

Issues regarding race and interaction with law enforcement must be addressed

## Discuss Danger

You can't say this person put the juror in danger

BUT: you can imply it by discussing the danger to society as a whole

## Relate to Personal Experience



Personal impact from impaired drivers



Skills required to drive



Observations of bad driving/involvement in a crash



Personal experiences viewing impaired people

## If you feel different you are different

1

Discuss why people use alcohol, prescription drugs, and illegal drugs

2

Engage jurors in conversation about their knowledge and experiences

3

Always remember: it's not the drug it's the drive!

### Juror Prior Convictions

Uncomfortable question

Have a jury book

Do you ask them?

### Awkward Responses

Opportunities in Disguise

"I was wrongfully convicted years ago. The justice system sucks."

"I think you should be 100% convinced. Anything less is unfair."

"I don't believe anyone should ever drive drunk. If they do they should go to prison for a long time."

"I had a family member killed by an impaired driver". (bursts into tears)

### Teach Them Your Case



### **Core Issue: Operation**

Crash cases: explain how "operation" is proven

Educate on circumstantial evidence: use analogy

#### Core issue: Vehicle

- Is it a regular passenger vehicle?
- Commercial vehicle?
- Moped or motorcycle?
- Bicycle?
- Four- wheeler?
- Other?



### Core issue: Street, Highway, or Public Vehicular Area

Where is the crime scene?

Parking lots? Closed store? Dirt road?

Crash cases: is the vehicle off the road?

Do not presume they will not over-think this: they will if there is any question

## Core Issue Phase: Impairment

The crime is not the drug: it's the drive. Do not vilify the drug of choice.

Discuss what drunk / impairment means to each juror

Point out that everyone is affected by alcohol or drugs differently

Make them say they will follow the law!

Core Issue
Phase:
Impairment

What does impairment look like to you?

Discuss tolerance

Discuss addiction

### Alcohol cases:

HAMMER THE EIGHT!



# Drugs other than alcohol

Ads for medications explaining side effects

Warnings on prescription bottles

Illegal drugs

Combinations of drugs

### **Core Issue: Refusal**

| Explain | implied consent      |
|---------|----------------------|
| Explain | the importance       |
| Explain | what a refusal means |

### **Educate on New Concepts**

**SFSTs HGN Blood Testing** Collision Toxicology DRE Reconstruction

### On to the facts....

01

Where did it happen?

02

What happened?

03

How was the investigation done?

04

Are there any problems?

### Where did it happen?

Is there anything about the fact that the defendant was driving while impaired/ had a crash while impaired that is

Near your home

Near the local school

Near your work

On a road you frequently travel

Etc.



That puts you in a position where you can't be fair to both sides?

### What happened?

- Is there anything about the fact that
  - Children were in the car
  - Someone was injured
  - Property was damaged
  - The defendant was impaired on a prescription
  - The defendant was asleep in the lane of travel
- That puts you in a position that you can't be fair to both sides?

## The Investigation

Was there a DRE or any additional experts?

Was there bodycam/ dashcam?

Are there pictures?

Did the defendant become violent?

### Problems







Are there missing witnesses?

Is there video no longer available?

Were there any equipment failures?

By the time your jury is seated, they should understand the law, be willing to follow it, and be anticipating all the facts.

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